IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

Crl.MC.No. 1181 of 2007()

CC.291/2005 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

.....

PETITIONER/ACCUSED NO.2:

JAYAPRAKASAN PILLAI,S/O.RAMAN PILLAI,
KOCHUKALA PURAYIDAM,BALAGRAM,KARUNAPURAM,
IDUKKI.

BY ADV. SRI.V.R.GOPU

RESPONDENT/RESPONDENT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1181 of 2007

Dated this the 12th day of April 2007

O R D E R

The petitioner faces indictment in a prosecution interalia under Sections 406 and 420 read with 120B I.P.C. Cognizance has been taken on the basis of a final report submitted by the police. The petitioner has already entered appearance and has been enlarged on bail, it is submitted. The petitioner has come to this court with the prayer that powers under Section 482 Cr.P.C may be invoked to prematurely terminate the proceedings against the petitioner. The allegations are false and should not be accepted, it is contended.

2. I have heard the learned counsel for the petitioner. I have gone through the records produced. I must alertly remind myself of the nature and quality of the jurisdiction which I may called upon to invoke. That is an extraordinary inherent jurisdiction. Such jurisdiction has to be invoked only sparingly and in an exceptional case in aid of justice. It cannot certainly be invoked as a matter of course.

3. I shall carefully avoid any detailed expression of opinion on merits regarding the acceptability of the contention lest it may prejudice the interests of either of the parties. Suffice it to say that I am satisfied that this is an eminently fit case where the petitioner must raise the plea for discharge before the learned Magistrate at the stage of Section 239/240 Cr.P.C. Premature termination proceedings can be claimed in a prosecution by an accused ordinarily and normally at the stage of Section 239/240 Cr.P.C. This court has jurisdictional competence to invoke the powers under Section 482 Cr.P.C notwithstanding existence on such an ordinary remedy. But it must always be ensured that such inherent powers are invoked only under exceptional and compelling circumstances. This, I am not satisfied, is a fit case where such powers under Section 482 Cr.P.C can or ought to be invoked. The petitioner, I am satisfied, is left to say ordinary and normal course in the court for claiming discharge under Section 239/240 Cr.P.C.

4. The learned counsel for the petitioner submits that the petitioner is a person residing at Idukki and insistence on personal appearance on all dates of posting for considering the

plea of discharge would cause great inconvenience, prejudice and loss to the petitioner. I find no reason to assume that the learned Magistrate would insist on personal appearance of the petitioner. The petitioner can appear through counsel and make his plea for discharge. Such application for exemption must certainly be considered by the learned Magistrate sympathetically and favourably. Only if the learned Magistrate chooses to frame charge under Section 240 Cr.P.C, need the personal presence of the petitioner be insisted.

5. In the result, this Criminal Miscellaneous Case is dismissed but with the above specific observations.

6. Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007